

**CRIMINAL APPEAL No.352 OF 1993**

**Against the judgment and order  
of conviction and sentence  
dated 7.10.1993/13.10.1993  
passed by Sri M.L. Hansdah,  
1<sup>st</sup> Additional Sessions Judge,  
West Champaran, at Bettiah in  
Sessions Trial No. 101/83.**

1. SUDAMA RAI, SON OF AMBIKA RAI
  2. BIRENDRA RAI, SON OF BALDEO RAI
- BOTH RESIDENTS OF VILLAGE KATHARI, POLICE STATION SIKARPUR (SATHA)  
DISTRICT- WEST CHAMPARAN AT BETTIAH

----- APPELLANTS

**Versus**

THE STATE OF BIHAR

----- RESPONDENT

**For the Appellants :- Mr. U.P. Chainpuri, Advocate  
Mr. Chandra Mauli Prasad Singh, Advocate**

**For the State :- Mr. S.N. Prasad, A.P.P.**

**P R E S E N T**

**THE HON'BLE JUSTICE SMT. SHEEMA ALI KHAN**

**S.A. Khan, J.**

There are two appellants before this Court. Appellant no. 1 Sudama Rai has been sentenced under Section 304 part II of the Indian Penal Code to undergo R.I. for six years whereas appellant no. 2 Birendra Rai has been sentenced to undergo R.I. under Section 324 of the Indian Penal Code for two years.

The prosecution case in short is that on 22.9.1991, informant Dharamraj Rai found two

goats of accused Suraj Rai (acquitted) grazing the 'Arhar' field and damaging the crops. Informant caught the goats and was taking them to cattle pond at Sathi. When he reached near the house of accused Suraj Rai, all the seven accused persons including the appellants came there variously armed with Bhala, Garasa and lathi. It is said that accused Suraj Rai (acquitted) assaulted him with Garasa on his head and appellant no. 2, Birendra Rai is said to have assaulted him with Bhala causing injury on his left arm and other accused persons assaulted him with lathi on different parts of his body. On hearing the commotion father of the informant Bhual Rai @ Bhual Rao (deceased), brother of the informant Ramjee Rai (P.W.5) and the ploughman Gaya Raut (P.W.3) rushed to the spot and tried to save the informant. It is then alleged that appellant no. 1 Sudama Rai assaulted the informant's father Bhual Rai @ Bhual Rao with a Garasa on the head, Bhola Rai (acquitted) assaulted Bhual Rai @ Bhual Rao with a lathi. Accused Birendra Rai assaulted Ramjee Rai with Bhala causing injury on his cheek, and Gaya Raut with Bhala on his thigh.

The occurrence took place around 6 p.m. The case was investigated and charge sheet was submitted under Section 302 of the Indian Penal Code.

The defence case is that Suraj Rai (since dead) was resting in his house when Dharamraj Rai, Bipin Rai, Krishna Rai, Ramjee Rai and Raja Rai came armed with lathi, Garasa and Bhala and began to unfasten the two goats. It is alleged that Dharamraj Rai assaulted Suraj Rai with Garasa on his head, Krishna Rai and Raja Rai assaulted Suraj Rai with a lathi. Birendra Rai was also assaulted by Dharamraj Rai. The statement of Suraj Rai was recorded at 8 p.m. in the thana. The defence also took a plea of alibi on behalf of Bhola Rai and Bhushan Rai. Out of the seven accused persons, Suraj Rai died and four other have been acquitted by the Trial Court whereas the appellants have been convicted as mentioned above.

During trial 11 witnesses have been examined. Three points have been raised in this case. The first point raised on behalf of the appellants is that the statement of the

witnesses does not tally with the medical evidence. Secondly it has been submitted that the appellants had exercised their right of self defence and as such the Court may consider acquitting them in the facts of this case and thirdly it has been argued that the appellant no. 1 had to face the rigor of trial for 10 years and 28 years have passed before this case is being heard and as such this Court should accordingly pass an appropriate order taking this aspect into consideration.

It is the consistent evidence of all the witnesses P.Ws. 3, 5, 6 and 7 that the appellant no. 1 had inflicted a Garasa blow on the head of Bhual Rai @ Bhual Rao and the injury report indicates that the wound was a lacerated one. P.W. 10 who is the doctor had examined Bhual Rai @ Bhual Rao and has specifically stated that he did not find any incised injury on the head of the deceased. The Trial Court has met this submission by stating that during the occurrence it is quite possible that the witnesses had not specifically seen with which part of the Garasa the blow was inflicted, and as such has held

that since there is consistent evidence of all the witnesses that the appellant no. 1 had inflicted a Garasa blow on the head of Bhual Rai @ Bhual Rao, (the appellant no. 1) is liable to be held responsible for the injury. On perusal of the evidence I find that the witnesses have stated that the Garasa blow was inflicted by appellant no. 1. It has not been specifically mentioned which side of the Garasa was used for inflicting the blow. It is submitted that some shadow of doubt has been raised with respect to the injury caused on Bhual Rai @ Bhual Rao. This Court is however, only inclined to consider the alternative argument advanced on behalf of the appellant no. 1.

The occurrence as stated earlier took place in 1981. The trial commenced in 1983 and judgment was delivered in 1993 therefore, the appellants had to face the trial for 10 long years before their fate could be decided by the Court. Again in 1993 this appeal was filed before the High Court and the matter has been taken up 14 years later in the year 2009. In all, 28 years have passed if the date of

occurrence is taken into account which in itself is sufficient punishment for a person (accused). Besides which the Court has estimated the age of Sudama Rai in October 1993 to be 55 years of age which would make him around 70 years today. Considering the period elapsed since the date of occurrence and the age of the appellant no. 1, I do not think it would be proper for this Court to send the appellant no. 1 back to custody and as such the sentence under Section 304 part II is altered to period undergone with stipulation that the appellant no. 1 should pay a fine of Rs. 5,000/- to the informant Dharamraj Rai or his heirs after receipt of notice from the trial Court within a period of three months failing which he will have to undergo R.I. for three months.

Appellant no. 2 Birendra Rai has been convicted to undergo R.I. for two years. Considering and applying the same principle which has been applied in the case of appellant no. 1 and also considering that the appellant no. 2 is now 56 years of age, he too should be treated in a similar manner. Considering that

the injuries inflicted by appellant no. 2 are simple in nature, I hold that he is liable to be convicted under Section 323 and thus alter the sentence to the period already undergone.

The appeal is dismissed with the aforesaid observations. The appellants are discharged from the liabilities of their bail bonds.

Patna High Court,  
4<sup>th</sup> May, 2009  
N.A.F.R./Sanjay

**(Sheema Ali Khan, J.)**

